IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11/03/2004

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

SECOND APPEAL No.1058 of 1993
and
C.M.P.No.11020 of 1993

S.Ganapathy .. Appellant

-vs-

1. Kunjammal
2. Selvi
3. Minor Arunagiri
4. Chinna Ponnu @ Minor Jansirani
(Minors 3 and 4 represented
by mother and natural guardian
the 2nd respondent) .. Respondents

This second appeal is preferred under Sec.100 of the Code of Civil Procedure against the judgment and decree of the Court of Subordinate Judge, Nagapattinam in A.S.No.22/91 dated 24.6.93 reversing the judgment and decree of the Court of District Munsif, Thiruvarur in O.S.No.119/88 and dated 26.7.90.

!For Appellant : Mr.V.Raghavachari

^For Respondents : Mrs.R.T.Shyamala for R1
RR2 to 4 - No appearance

:JUDGMENT
This second appeal is directed against the judgment of the learned Subordinate Judge, Nagapattinam, made in A.S.No.22/91, whereby the judgment of the trial Court granting a decree in a suit for permanent injunction was reversed.

2. The short facts necessary for the disposal of this appeal are as follows: The plaintiff, who is the appellant herein, has been cultivating the suit property for the past seven years by contribution of his and his family members' physical labour. He was a tenant of the suit property, which belonged to Samudhayam. He has been in possession and enjoyment of the same. He obtained agricultural loans in the year 1981 . He produced the loan disbursement card. A part of the suit property containing coconut trees, was leased out to one Govindan. A Muchalika was also executed

by him. The plaintiff has purchased in 1987 from one G.V.Raghavan his share in the Samudhayam, which is the suit property herein. The document is filed only for collateral purpose thereby approving the possession of the plaintiff in the suit property. The first defendant has no right whatsoever over the suit property; but, he attempted to interfere in the peaceful possession and enjoyment of the plaintiff and to trespass into the suit property, which necessitated the plaintiff to file the suit.

3. Since the first defendant died during the pendency of the suit, his legal representatives were added as defendants 2 to 5, who prosecuted the defence. The suit was resisted by the defendants stating that it is true that the suit property belonged to the Samudhayam; that 22 pattadars had the respective shares in the property; that the plaintiff was never in possession, enjoyment or in cultivation of the property; that the plaintiff was never a cultivating tenant; that the plaintiff was a carpenter and was eking his livelihood out of his profession; that all the documents filed along with the plaint were created for the purpose of the case; that the plaintiff has filed a petition before the authority in RTR No.50/87, and it is also pending; that the first defendant's father pursuant to the lease entered into, has been cultivating the land and paying 25 Kalam of paddy towards the loan amount; that the first defendant's father died seven years before, and from the time onwards, the first defendant took possession of the same by entering into an agreement with the sharers of the Samudhayam; that the possession of the property has been continuously for a period of 50 years with the family of the defendants; that all the causes of action found in the plaint were only invented for the purpose of the case, and hence, the suit was to be dismissed. 4. The trial Court framed the necessary issues, tried the suit and decreed the same. On appeal by the defendants, the first appellate Court reversed the judgment of the trial Court and dismissed the suit. Hence, this second appeal has been brought forth by the plaintiff aggrieved over the judgment of the first appellate Court. 5. The following substantial questions of law were formulated by this Court at the time of admission: (1) Whether the lower appellate Court has not committed serious error in disbelieving Ex.A1, especially when the same is proved by examination of attestors to the document who are independent witnesses? (2) Whether the lower appellate Court has not failed to see that the plaintiff has proved his possession in and over the suit property by Ex.A1 to A6 and A9 to A15 corroborated by the evidence of P.W.2 and P.W.5? (3) Whether the lower appellate Court has not failed to see that the respondents have not proved their possession by production of any document or by examination of any witnesses especially Murugayya Pillai from whom they alleged to have got the property? (4) Whether the lower appellate Court has not failed to see that the suit property is a public land given to the Village Achari and the plaintiff has been in possession of the same by virtue of being Village Achari?

6. This Court heard the learned Counsel for the appellant and also the learned Counsel for the respondents on those contentions. 7. It is not in controversy that a piece of land with an extent of 1 acre and 18 cents situated in Survey No.92/1 of Kankodutha Vanitham Village, Kudavasal Taluk, belonged to the Samudhayam of the said village. The specific case of the

plaintiff was that originally one Ramasamy Achari, who was the Village Carpenter, was put in possession of the suit property by the Samudhayam; that he was also cultivating the same; that during that time, he leased out the same to one Thangarasu, and he was in possession and enjoyment of the property and was cultivating the same; that the next year therefrom, the Village Carpenter namely Ramasamy died, and hence, the plaintiff was appointed as Village Carpenter; and that during the period when Thangarasu was cultivating the land, he made an application before the authorities, and his name was recorded in the RTR as a cultivating tenant. It is not in dispute that the first defendant was the son of Thangarasu, and he was also cultivating the land for sometime. But, according to the plaintiff, on his appointment as Village Carpenter, the first defendant handed over the possession in the year 1984, and in that regard Ex.A1 surrender deed was executed. In order to prove his possession from the time of Ex.A1, the plaintiff has filed Exs.A3 to A6 and A9 to A15, which would clearly indicate that the plaintiff has availed loans from Kavalakudi Agricultural Credit Society and has been paying the loan amounts then and there. Even in the original plaint, he has averred that there were coconut trees, and one Govindan had taken them on lease by executing a lease agreement under Ex.A2. The said Govindan, examined on the side of the plaintiff as P.W.3, has categorically deposed that he took coconut trees on lease from 1986 and has been in possession. In such circumstances, no reason is available to disbelieve the evidence of P.W.3. 8. While the plaintiff in order to prove his case has brought forth the above evidence, the specific defence was that the first defendant during his life time and on his death his legal representatives namely defendants 2 to 6 have been in possession and enjoyment of the property and cultivating the same; and that they have been giving the lease amount to one Murugayya Pillai. It is pertinent to note that the said Murugayya was not examined on the side of the defendants. The defendants relied on Exs.B5 to 11, which would indicate that they were all receipts passed on by one Kumaresan. The learned Counsel for the respondents would submit that the Adangal extracts were also filed by the defendants' side, which were rightly accepted by the first appellate forum. A perusal of those adangal extracts filed by the defendants would clearly reveal that nowhere the name of either the first defendant or his legal representatives or the said Murugayya Pillai has been mentioned therein. No document is available to show that the defendants were in possession of the property at any point of time.

9. The first appellate Court has dismissed the suit stating that the plaintiff was not in possession of the property and in particular at the time of filing of the suit. This view taken by the first appellate Court is thoroughly erroneous in view of the available evidence. The plaintiff came with the specific averment stating that one Ramasamy, who was appointed as the Village Carpenter, was in possession of the property; that he leased out the property to one Thangarasu; that on the death of Ramasamy, the plaintiff was appointed as Village Carpenter; that after the death of Thangarasu, the property came to his son, the first defendant, and thus, he was in possession; and that on the appointment of the plaintiff as Village Carpenter, the first defendant handed over the possession and executed a surrender deed under Ex.A1. It is true that Ex.A1 deed is an unregistered one; but, the same is relied on by the plaintiff for collateral purpose to show that he got the

possession. That apart, all the documents from that time onwards would clearly show that the plaintiff as per the case projected before the trial Court, was put in possession, and he has been in possession of the property, which has got to be protected by the grant of a permanent injunction. Accordingly, the trial Court has granted the relief, which was erroneously set aside by the first appellate Court. Hence, the judgment of the first appellate Court has got to be set aside, and the judgment of the trial Court has to be restored.

10. In the result, this second appeal is allowed, setting aside the judgment and decree of the first appellate Court and restoring the judgment and decree of the trial Court. The parties shall bear their costs. Consequently, connected CMP is closed.

Index: yes
Internet: yes

To:

1. The Subordinate Judge Nagapattinam

2. The District Munsif Thiruvarur

3. The Record Keeper V.R. Section High Court, Madras.

nsv/

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